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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,243	06/22/2001	Johannes Schlebusch	10035.00	4928
20999	7590	06/02/2004		
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			EXAMINER SAYALA, CHHAYA D	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 06/02/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/806,243

Applicant(s)

SCHLEBUSCH ET AL.

Examiner

C. SAYALA

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 2/06/2004
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 1-4, 6-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 2 and 3, "a solid phase" lacks proper antecedent basis. There is no limitation in claim 1 that suggests there is a solid phase.

In claim 1, lines 8-11, applicant claims "water-absorbing" elements to be a selection from 3 groups or a combination thereof. But in view of the amendment to this claim and the inclusion of the new limitation reciting the presence, in the final product, of the flour, starch, waxy maize, silicas, physiologically unobjectionable metal oxides, non-toxic inerts, water-absorbing substances **and** cellulose powder/vegetable fibers, the recitation at lines 8-11 is redundant and render the claim indefinite because there is no selection to be made, since the claim now requires that all the elements at lines 13-16 be present in the final product.

In claim 9, "preferably" renders the claim indefinite because it is not clear if applicant is claiming just the preferred embodiments.

In the claims 1, 13 and 16, "water-absorbing substances" is indefinite because neither the specification nor the claims define what such substances are so that it can be determined what compounds these terms include for purposes of search and comparison with prior art.

In claim 3, is applicant claiming amounts of fat or a fat to oil proportion?

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***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4, 6-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/02670 in view of Lee (US Patent 5456933) and Berry et al. (US Patent 4031267).

'670 teaches a chunk product that consists of blood proteins, egg solids and vegetable proteins such as wheat flour, gluten and soy meal, less than about 20 wt %. The protein content is 10-22% wt. See page 5 and particularly lines 9-10 and 13, 19-20. The fat content is given as between 5-25% wt. See page 6, line 9. Note that the patent also teaches "However the amount of fat is not an important parameter....and the amount can be selected as desired. Consequently, no fat need be added". And "Reducing the importance of fat as a parameter in the process is a major advantage of the process. Thus it would have been obvious to one of ordinary skill in the art, that even though the amount of fat is at 5%, to reduce it as suggested by the reference itself, would be advantageous. The ratio of protein to starch is not given per se, but it would be obvious to fathom such from the amounts given for individual ingredients. The amount of water is disclosed as 45-85%, at line 35, page 5. Claims 9-12 recite limitations relating to the appearance of the product. In this regard, the patent states that the reference product is moist, stable to canning procedures and is chewy and has a meat-like appearance. The office is not equipped to manufacture prior art products and compare them with what is claimed, and it would have been obvious to one of ordinary skill in the art at the time the invention was made that this reference description

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reads on being "deformation-resistant" to outside touch. As for the process claims, the patent teaches a mixture of proteins, which includes a mixture of flour being denatured by alkali, and the temperature being raised to 100°C plus to coagulate it (page 6, lines 20+ to page 7, line 35). Note that at page 5, line 30, the addition of salt is disclosed. The product is in chunks and has a striated appearance resembling meat. The texture is said to be chewy. The patent does not teach the silica or the metal oxides, fillers or water-binding substances or cellulosic fibers or that the chunks are shaped as strands.

Lee teaches a similar product, a uniform, "cohesive shaped piece which maintains its distinctive definitive shape upon hydration and retort", which contains soy or wheat gluten and starch from cereal flours. Col. 5. The patent teaches that the product contains 15-65% starch from cereal flours. A fat source is also included and is in a range, 0-9 wt%, within the claimed range of less than 5%. The ratio of protein to starch can be fathomed from the various amounts at Table I. At col. 4, lines 16-30 and col. 5, lines 59-65, the patent states that the exact amounts of protein, carbohydrate and fat can be selected from the amounts given (that already include the ranges claimed herein), depending on the specific type of ingredient, and determining the amount of ingredient needed to achieve the necessary concentration in the ranges specified in Table I. Even though the patent shows a variety of ratios of protein and starch at Table I, it would have been obvious to one of ordinary skill in the art to fathom amounts within the ranges/amounts shown to achieve the type of uniform, "cohesive shaped piece which maintains its distinctive definitive shape upon hydration and retort", as needed. Claims 9-12 recite limitations relating to the appearance of the product. In this regard, the patent states that the reference product is spongy to the touch and chew. See col. 3, lines 5-10. The office is not equipped to manufacture prior art products and compare them with what is claimed, and it would have been obvious to one of ordinary skill in the art at the time the invention was made that the reference description of being spongy reads on being "deformation-resistant" to outside touch. In addition, Lee teaches fiber in the product, in an amount of 1-30%. See col. 6, line 65 to col. 7, line 5. Note that the extrudate is cut into bite size pieces or kibbles. See examples.

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Berry et al. is drawn to an expanded protein product that uses fillers to reinforce the protein (col. 3, lines 41-43). The proteins are the same (col. 3, lines 5-15) and fillers such as silicon dioxide, or cellulose fiber (col. 3, lines 45-70) are added. The degree of expansion and texturization of the proteinaceous material is affected by the choice and amount of filler. The filler is used in an amount 1-15%. Col. 4. Note the use of soy flour at col. 4, line 48. See example 1. The extrusion is in the form of ropes. Thus this reference teaches the advantage of using fillers.

Because all these patents teach similar products with similar ingredients, then it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the fiber of Lee and the fillers of Berry et al. in the product of the WO patent for the advantages shown by the secondary references as discussed above. To extrude the product into strands or ropes would have been a matter of choice since such shapes were already disclosed by prior art at the time the invention was made, as well as the production of bite size kibbles.

### ***Response to Amendment***

Applicant's arguments filed 2/6/2004 have been fully considered but they are not persuasive. Applicant's claim 5 was not searched adequately because it was not clear what "water-binding" compounds were. See the rejection under 35 USC 112, second paragraph. The specification does not describe such compounds either. In view of applicant's amendment to claim 1, and applicant's non-responsiveness with regard to the terms "water-binding" compounds, the claims are considered to be unpatentable. Further, applicant's arguments with respect to claim 5, now incorporated into claim 1, have been considered but are moot in view of the new ground(s) of rejection.

### ***Prior Art of Record***

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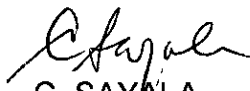
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
C. SAYALA  
Primary Examiner  
Group 1700.